

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

Patrick M. Roach  
Affirmative Legal Services  
ASF/Metro Food Service, Inc.  
ASF/R & R Hospitality, Inc.  
SSN XXX-XX-9559

**CASE NO. 04-34038 GFK**

Debtor.

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. ABN AMRO Mortgage Group, Inc. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 20, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 15, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than September 9, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on July 12, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$139,000.00, as evidenced by that certain mortgage deed dated April 20, 2000, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated April 20, 2000, executed by Patrick Roach, A/K/A Patrick M. Roach an unmarried person, recorded on June 12, 2000, as Document No. 3327210, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Ramsey County, Minnesota and is legally described as follows to-wit:

Lot 3, Block 1, Idawill Homesites.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 2, 2004, Debtor is delinquent in the making of monthly payments as required for the months of April, 2004 through August, 2004, inclusive, in the amount of \$1,429.24 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

**WHEREFORE**, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be terminated so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 2nd day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske  
James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

DOC# 3327210

Certified Recorded On  
JUNE 12, 2004 AT 09:41AMSigned: DJ  
OFFICE CLERK/RECORDS  
RAMSEY COUNTY MN

Fee Amount: \$12.00

3697 463 43 05/04/04 12:05

DOC# 3327210

Certified Recorded On  
JUNE 12, 2004 AT 09:41AMSigned: \_\_\_\_\_  
OFFICE CLERK/RECORDS  
RAMSEY COUNTY MN

Fee Amount: \$12.00

3697 463 43 05/04/04 12:05

HTG TAX 319.70

LOAN NO. 123814

## MORTGAGE

Walsh  
Title

040909

THIS MORTGAGE ("Security Instrument") is given on APRIL 20, 2000. The mortgagor is Patrick Roach, A/K/A Patrick M. Roach an unmarried person

("Borrower").

This Security Instrument is given to  
BPM MORTGAGE SERVICES, INC.,  
A Minnesota Corporation

which is organized and existing under the laws of The State of MN

7101 Northland Circle #200

Brooklyn Park, MN 55428

Borrower owes Lender the principal sum of

ONE HUNDRED THIRTY-NINE THOUSAND AND 00/100

("Lender").

Dollars (U.S. \$ 139,000.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on MAY 1, 2020 and for interest at the yearly rate of 8.125 percent. This

Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in Ramsey County, Minnesota:

Lot 3, Block 1, Idawill Homesites

3697 463 43 05/04/04 12:05  
C.STAMPS 3.00

which has the address of 1960 Asbury Street, Roseville

Minnesota 55113  
(City) (State) (Zip Code)  
("Property Address"):

(City)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

BPM0200A - Single Family - 1500/AVELINE (BPM000) Distribution  
P0000000

Page 1 of 6

Initials: DR

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EXHIBIT 11

DOC# 3327210

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Patrick Roach (Seal)  
- Borrower

(Seal)  
- Borrower

(Seal)  
- Borrower

(Seal)  
- Borrower

(Sign Below This Line For Acknowledgment)

Return this document to: **BNM MORTGAGE SERVICES, INC.**  
7101 NORTHLAND CIRCLE #200  
BROOKLYN PARK, MN 55428

State of Minnesota County of Hennepin

The foregoing instrument was acknowledged before me this 20TH of APRIL, 2000 by Patrick Roach, A/K/A Patrick M. Roach an unmarried person to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Robert S. Schaffling  
Notary

Drafted By: **BNM Mortgage Services, Inc.**  
7101 Northland Circle #200  
Brooklyn Park, MN 55428



**UNITED STATES BANKRUPTCY COURT  
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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

**ARGUMENT**

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 2, 2004, Debtor is delinquent for monthly payments for the months of monthly payments as required for the months of April, 2004 through August, 2004, in the amount of \$1,429.24 each; accruing late charges and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

The property is also subject to a Home Equity Line of Credit in favor of Affinity Plus Credit Union in excess of \$20,019.03. The property is also subject to another Home Equity Line of Credit in favor of Peoples Bank of Commerce in excess of \$49,515.35.

**CONCLUSION**

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 2nd day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

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SSN XXX-XX-9559

**AFFIDAVIT OF  
REBECCA GREEN**

Debtor.

Rebecca Green, being first duly sworn on oath, deposes and states:

1. That she is the Bankruptcy Specialist of ABN AMRO Mortgage Group, Inc.

2. ABN AMRO Mortgage Group, Inc., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated April 20, 2000, executed by Patrick Roach, A/K/A Patrick M. Roach an unmarried person, recorded June 12, 2000, as Document No. 3327210. The property is located in Ramsey County, Minnesota and is legally described as follows, to-wit:

Lot 3, Block 1, Idawill Homesites.

3. That she has reviewed the account records relating to the Roach mortgage loan, account no. 640865909.

4. That as of August 20, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$126,297.74
Interest through August 20, 2004	4,835.61
Attorney's Fees:	700.00
Late Charges:	234.68
Escrow Advance Balance:	477.11
Corporate Advance Balance:	465.00
Recording Fees:	25.00
Property Inspection Fee:	45.00
<b>TOTAL:</b>	<b>\$133,080.14</b>

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of April, 2004 through August, 2004 in the amount of \$1,429.24 each.

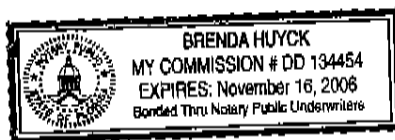
6. This affidavit is given in support of the motion of ABN AMRO Mortgage Group, Inc. for relief from the automatic stay.

ABN AMRO MORTGAGE GROUP, INC.

By Rebecca Green  
Its Bankruptcy Specialist

Subscribed and sworn to before me  
this 23 day of August, 2004.

Brenda Huyck  
Notary Public





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**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on September 2, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Rebecca Green, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Patrick M. Roach  
1960 Asbury Street  
Roseville, MN 55113

Affinity Plus Credit Union  
175 West Lafayette Road  
St. Paul, MN 55107

Larry B. Stevens  
Larry B. Stevens & Associates  
2233 N Hamline Ave Ste 412  
Roseville, MN 55113

Peoples Bank of Commerce  
3600 West 80<sup>th</sup> Street, Suite 130  
Minneapolis, MN 55431

Ford Motor Credit Company  
c/o Stewart, Zlimen & Jungers, LTD.  
430 Oak Grove Street, #200  
Minneapolis, MN 55403

John A. Hedback  
2855 Anthony Ln S Ste 201  
St. Anthony, MN 55418

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 2nd day of September, 2004.

/e/ Diana Waletzko  
Diana Waletzko

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DISTRICT OF MINNESOTA**

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**ORDER**

The above entitled matter came on for hearing upon motion of ABN AMRO Mortgage Group, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on September 20, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated April 20, 2000, executed by Patrick Roach, A/K/A Patrick M. Roach an unmarried person, recorded on June 12, 2000, as Document No. 3327210 covering real estate located in Ramsey County, Minnesota, legally described as follows, to-wit:

Lot 3, Block 1, Idawill Homesites

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3),

this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Bankruptcy Court